

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

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www.montgomerycountymd.gov/content/council/zah/index.asp

IN THE MATTER OF:

VICKI L. FERGUSON

Vicki L. Ferguson,

Richard Vitullo,

For the Application

Cece Kinna,

For the Department of Housing and

Community Affairs

Before: Tammy J. CitaraManis, Hearing Examiner

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OZAH Case No. CU 16-08

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On November 18, 2015, Vicki L. Ferguson, (Applicant), filed Application CU 16-08, seeking approval of a conditional use to allow an attached accessory apartment in accordance with Zoning Ordinance §§ 59.3.3.3.A & B and 59.7.3.1.¹ The proposed accessory apartment will be located in the basement of an existing two-story detached dwelling located at 7117 Garland Avenue, Takoma Park, Maryland, in the R-60 Zone. The property is further described as Lot 11, Block 38-F in the Fletcher's Addition to Takoma Park. The Tax Account Number is 03177725. Exhibits 3 and 4.

Application CU 16-08 was filed based on a Denial Letter and Referral Notice from the Department of Housing and Community Affairs (DHCA) dated August 21, 2015. DHCA advised that the property did not meet the minimum on-site parking requirements for a Class III Accessory Apartment License under the licensing provisions found in Section 29-19 of the Montgomery County Code because the property did not have a driveway. DHCA referred Applicant to the Office of Zoning and Administrative Hearings (OZAH) to apply for a conditional use to deviate from the on-site parking requirements for an accessory apartment use as provided in Section 59.3.3.3.A.2.b.i of the Zoning Ordinance. Exhibits 1-2.

The Hearing Examiner is authorized to hear and decide this type of Application pursuant to Section 59.7.3.1 of the Zoning Ordinance. The public hearing before the Hearing Examiner was scheduled for Monday, March 7, 2016, in a Notice of Hearing issued on November 20, 2015. Exhibit 20.

Staff of the Montgomery County Planning Department (Technical Staff or Staff)

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended effective December 21, 2015, in ZTA 15-09 (Ordinance 18-08, adopted December 1, 2015).

conducted a site visit of the property on February 12, 2016, and issued a report dated February 23, 2016, recommending approval subject to three conditions (Exhibit 24, p. 2):

1. The Applicant is bound by all submitted statements and materials of record.
2. The total number of occupants residing in the accessory apartment who are 18 years or older is limited to 2.
3. No other rental residential uses are allowed to be located at the subject site.

DHCA Housing Code Inspector Cece Kinna (Ms. Kinna) inspected the property on February 29, 2016, and reported her preliminary findings in a Memorandum dated March 2, 2016.² Exhibit 25.

The hearing went forward as scheduled on March 7, 2016. Applicant appeared *pro se*. Applicant testified in support of the application and adopted the findings and conclusions in the Technical Staff report (Exhibit 24) as her own evidence of record and agreed to comply with the conditions of approval. Applicant acknowledged and agreed to correct the issues noted in the DHCA housing inspection report. T. 6-11, 13-23, 25, 30-33. Applicant submitted an executed Affidavit of Posting. Exhibit 26. Applicant's architect, Richard J. Vitullo (Mr. Vitullo), also testified in support of the application. T. 9, 11-14, 17-21, 23-25, 27-31. Ms. Kinna testified on behalf of DHCA and presented her report. Exhibit 25; T. 23, 26-31, 34-35. There were no other witnesses present at the hearing and no letters of support or opposition were received in this matter. The record was left open an additional ten (10) days for receipt of the hearing transcript which was timely received. The record closed as scheduled on March 17, 2016.

Based on a thorough review of the entire record, and for the reasons stated herein, the Hearing Examiner finds sufficient evidence that there is adequate on-street parking to grant Applicant's request to deviate from the minimum on-site parking requirements for an attached accessory apartment pursuant to Section 59.3.3.3.A.2.c. Further, the Hearing Examiner finds

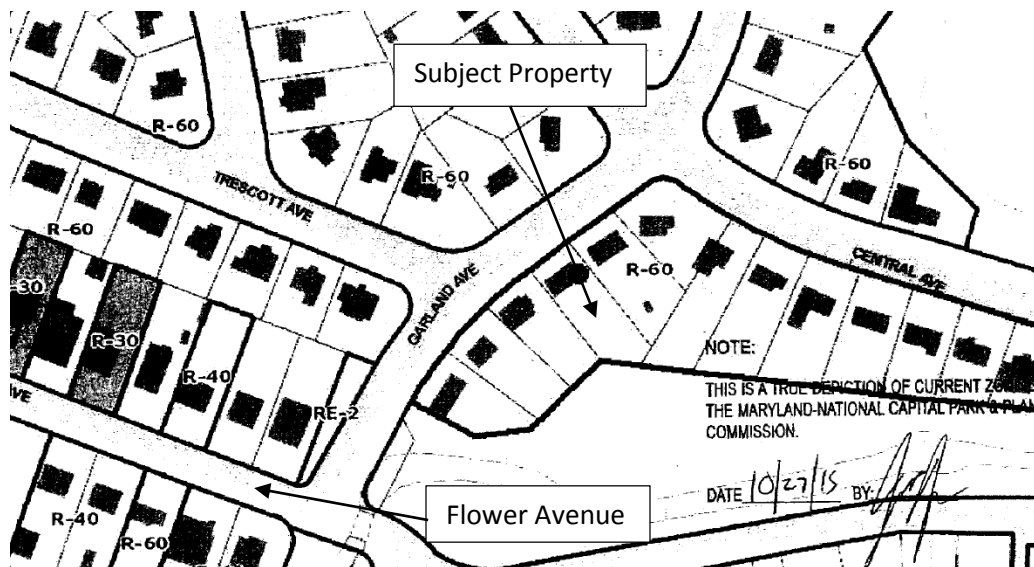
² The substance of Ms. Kinna's report is on pages 8-10 of this Report and Decision.

the standards for a conditional use application for an attached accessory apartment have been satisfied. The Hearing Examiner therefore approves the conditional use application CU 16-08, subject to the conditions set forth in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. The Subject Property

The property is located at 7117 Garland Avenue, Takoma Park, and zoned R-60. The interior lot is rectangular in shape and approximately 6,899 square feet in size with 55 feet of frontage along the east side of Garland Avenue. Exhibit 24, p. 2. Staff advises on-street parking along both sides of Garland Avenue is unrestricted and available on a first-come first-served basis. *Id.* at p. 5. The property is located in the middle of the block which is bound by Central Avenue to the north and Flower Avenue to the south. The Zoning Map of the area is shown below (Exhibit 6 (a)):

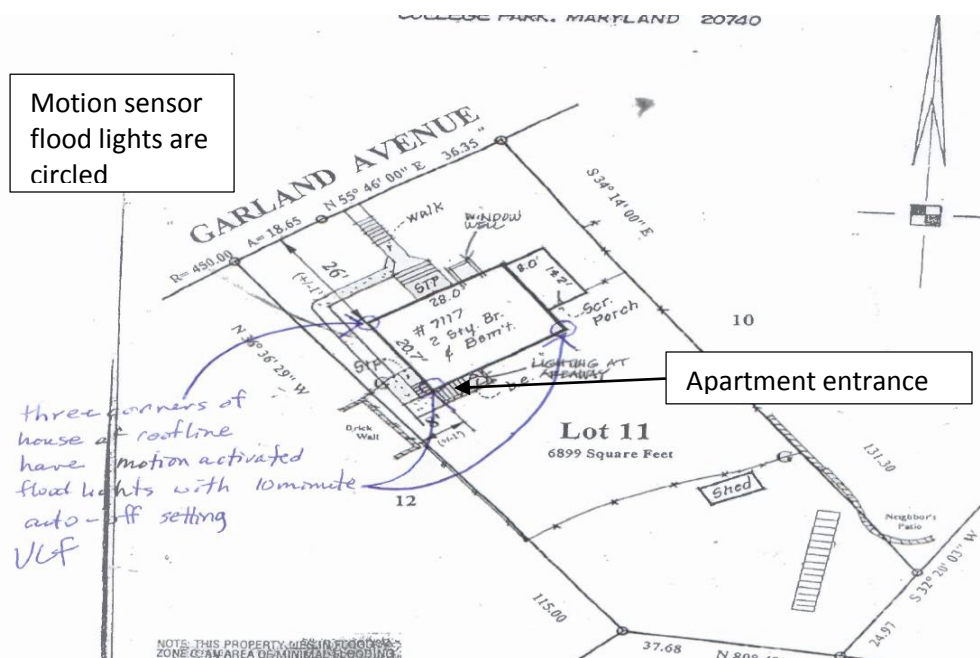


Zoning Map - Exhibit 6(a)

The lot is improved with a two-story detached house with a basement built in 1948 with

no on-site parking. Applicant reports that the total floor area for the main dwelling, including the basement, is approximately 1,722 square feet in size.³ Exhibit 5, pp. 2-3. The dwelling is located approximately 26 feet from the front property line. A concrete sidewalk and steps provide the only access to the front door of the main dwelling. The sidewalk continues along the southwest side of the dwelling to the side entrance to the kitchen and rear stairway and entrance into the basement.

The property survey, modified to show the location of the existing exterior lighting on the dwelling, is shown below (Exhibit 7):



Property Survey – Exhibit 7

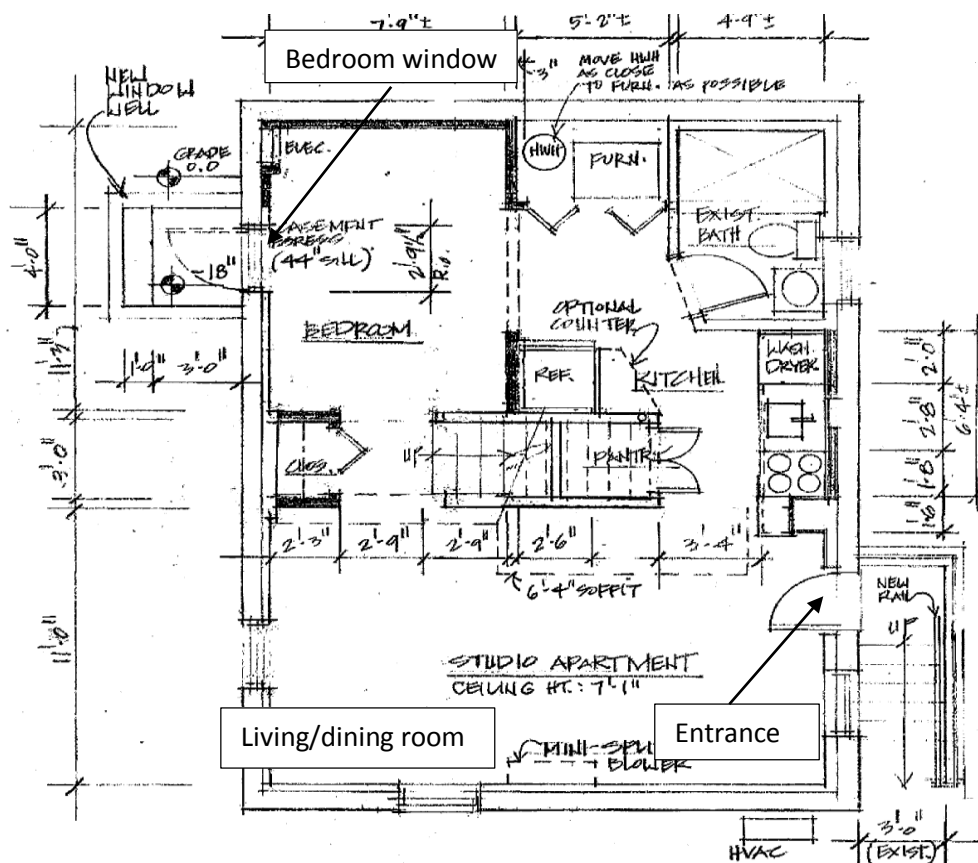
Technical Staff reports that the house is in good condition and the landscaping is well-maintained. Photographs of the property, taken by Staff during a site visit to the property on

³ According to the Maryland State Department of Assessments and Taxation (SDAT) records for the property, the above-grade enclosed area for the dwelling is 1,176 square feet. Exhibit 11. The basement is approximately 574 square feet. Exhibit 24, p. 2.

February 12, 2016, are shown on page 12 of this Report and Decision. (Exhibit 24, pp. 2-3).

B. The Proposed Use

Applicant is proposing to renovate the basement of her home to create a one bedroom accessory apartment (Apartment). The apartment will be approximately 574 square feet in size and will include a bedroom, living/dining room, bathroom and full kitchen.⁴ The Applicant will install an egress window and window well for emergency escape from the bedroom. The apartment entrance is located in the rear of the main dwelling and opens into the living/dining room. The proposed floor plan for the apartment is shown below (Exhibit 13(a)):



Floor Plan- Exhibit 13(a)

⁴ Ms. Kinna reported that the accessory apartment is approximately 600 gross square feet in size which she testified includes the exterior walls. T. 23.

Technical Staff describes the lighting, appearance and access to the apartment (Exhibit pp. 4-5):

Stairs lead from the street to the front of the house and a sidewalk wraps around from the front of the house to the proposed accessory apartment at the rear of the house. Adequate lighting, residential in character, is located above the entrance to the proposed use and will remain under this application. The entrance appears as a typical basement entrance, and does not detract from the appearance of the existing house. The Applicant does not propose any exterior modifications to the house.

Applicant provided photographs of the bedroom window and path to the apartment, shown below (Exhibit 17(a)-(c)):



Exhibit 17(b)



Steps to front door and path to the rear of the house

Exhibit 17(a)



Path on southwest side of house

Exhibit 17(c)

A photograph of the entrance to the accessory apartment, taken from Technical Staff report, is shown below (Exhibit 24, p. 5):

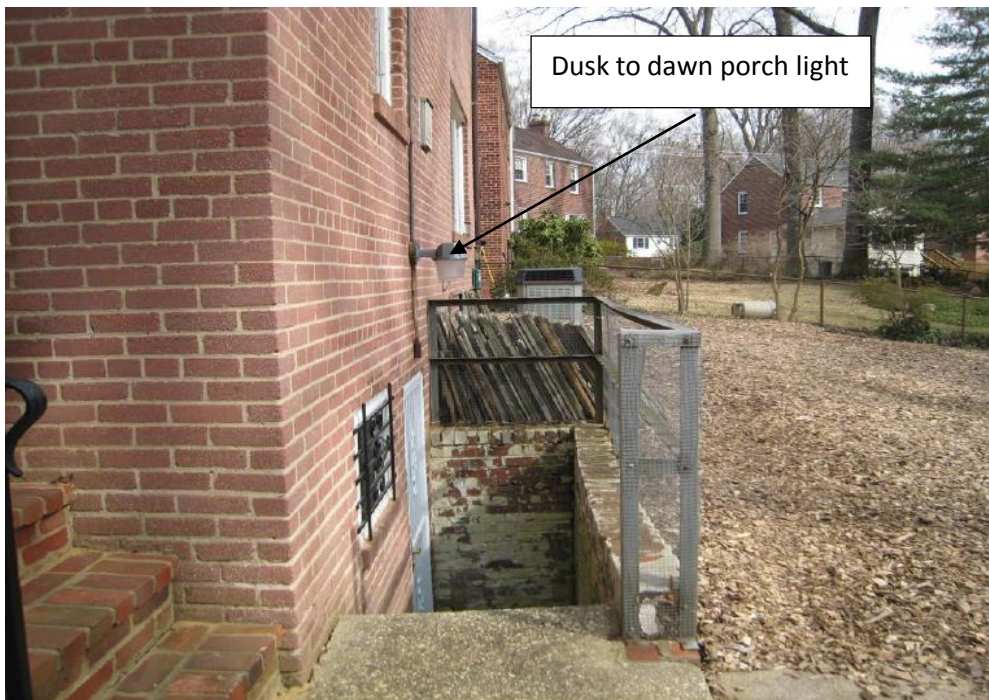


Figure 4: Entrance to the proposed accessory apartment at rear of existing one-family residence.

Exhibit 24, p. 5

Applicant modified the property survey, previously shown on page 5 of this Report and Decision, to reflect the location of the existing exterior lighting that will illuminate the path and entrance to the apartment. Exhibit 7. The existing exterior lighting includes two motion sensor flood lights mounted on the southwest side of the dwelling and one dusk to dawn porch light located over the apartment entrance. T. 16, 21-22.

DHCA Housing Code Inspector, Cece Kinna, inspected the apartment February 29, 2016, and reported her findings in a memorandum dated March 2, 2016. The substance of her report is set forth below (Exhibit 25):

All applicable permits must be obtained through the Department of Permitting and Services (DPS) and Washington Suburban Sanitary Commission (WSSC) and finalized before DHCA can approve a license. Observed Housing Code violations are:

1. The property does not meet the on-site parking requirement. There is no driveway at this residence. Water shut off and large established trees prevent the installation of a driveway. Curbside parking is available for at least 4 vehicles.
2. The apartment bedroom requires an egress window with a minimum 5.7 square foot opening, and be a minimum of 24" tall and 20" wide with no more than 44" from floor to base of window opening. Furthermore, as the bedroom window will be below grade, a window well must be installed (see attached requirements). Shrubs must be removed from the grounds in front of the egress window.
3. The walkway leading to the apartment poses a potential trip hazard as the ground is not level with the walkway. Grounds need to be filled to be level with the walkway.
4. Stairs descending to apartment entrance door: Brick retaining wall alongside stairs requires repairs & re-pointing; handrail required to be installed on one side of the descending stairs; top of retaining wall is required to have a guardrail installed – Guardrail must not be less than 42 inches in height, have balusters spaced no more than 4" on center, and be able to support 250 lb. force when applied.
5. Entrance doors must be replaced to be a minimum 32" wide (presently measure at 30"). Door locks must be changed to single cylinder locks that operate by thumb turn from the inside. Existing locks on main door and storm door require use of key from interior side and are prohibited.⁵
6. Drop ceiling in hall must be removed. Install minimum ½" drywall ceiling throughout. Drywall must be spackled, sanded and painted. Minimum ceiling height must be [6'8"] (bulkhead clearance must be a minimum [6'4"]).⁶
7. Total renovation of basement requires hardwired, interconnected with battery backup smoke detectors inside and outside sleeping areas and on every level. As gas appliances are or will be present, install carbon monoxide detectors.
8. Utility closet has gas furnace (high efficiency; scheduled for replacement in less than 30 days) and water heater (not high efficiency). Combustion air area must be kept separate from sleeping rooms by installation of walls and doors or replace water heater with high efficiency appliance.
9. Provide a complete kitchen consisting of range/oven, storage cabinets, countertops, a full size refrigerator with freezer, sink connected to hot & cold running water under pressure and approved sewer system.⁷

⁵ Ms. Kinna clarified that the door opening has to be 32" clear. T. 27.

⁶ Ms. Kinna corrected two typographical errors noted in item number 6 to reflect the correct minimum ceiling height and bulkhead requirements. T. 29.

⁷ Ms. Kinna confirmed that there is no minimum size requirement for the stove/range. T. 30.

10. Applicant must obtain and provide copies of approved DPS and WSSC building, electrical and plumbing permits for the basement unit construction.

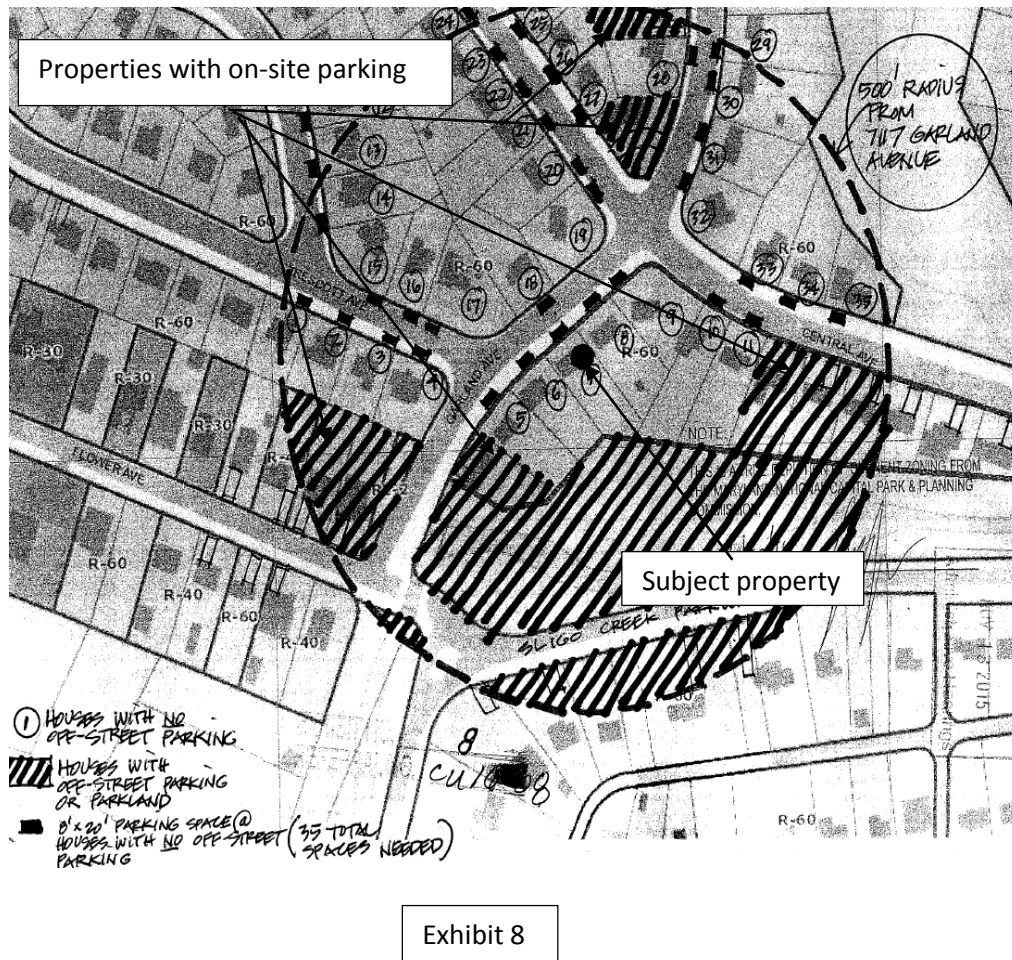
Applicant testified that she will renovate the basement as proposed in the architectural plans submitted with this application and will comply with and correct all the issues noted in the housing inspection report (Exhibit 25). T. 6-8 and 25.

C. Adequacy of Parking

Applicant is required to provide one on-site parking space for the proposed use in addition to the two spaces required for the main dwelling. Section 59.3.3.3.A.2.a.iii. (b) of the Zoning Ordinance.⁸ The property does not have a driveway and installation of a driveway is not proposed or feasible due to the lot size, topography and location of the dwelling, utilities and trees. Exhibit 5, p.2 and Exhibit 25. Applicant filed this conditional use application seeking a waiver of the minimum on-site parking requirements for an accessory apartment use as provided in Section 59.3.3.3.A.2.b.i. of the Zoning Ordinance. Exhibits 1-3. In order to deviate from the on-site parking requirements, Applicant must demonstrate that there is adequate on-street parking to accommodate the use without adversely affecting or reducing the available on-street parking for residents located within 300 feet of her property. Zoning Ordinance § 59.3.3.3.A.2.c.i.

Applicant testified there is adequate space in front of her property to park at least three cars and that she has never had any problem parking her vehicle in front of her house. T. 10. Exhibit 9. Applicant's architect, Mr. Vitullo, created a parking map of the neighborhood to illustrate the available on-street parking for properties located within a 500-foot radius of Applicant's property (Exhibit 8; T.11-13):

⁸ Section § 59.6.2.4.B of the Zoning Ordinance provides that a single-family detached dwelling must provide two on-site parking spaces.



The Housing Code Inspector, Ms. Kinna, reported “[c]urbside parking is available for 4 vehicles.” Exhibit 25. To support this conclusion, Ms. Kinna testified that when she inspected the property on February 29, 2016, she and her co-worker were able to park two pick-up trucks in front of the property with sufficient space to accommodate two more vehicles. T. 26.

Based on an on-site visit to the property on February 12, 2016, Technical Staff found “that the existing on-street parking will be adequate to meet the parking requirements for the proposed use.” Exhibit 24, p. 1. Staff included two photographs of the available on-street parking in front of the subject property (Figure 1) and along Garland Avenue (Figure 2), as shown on the next page of the Report and Decision (Exhibit 24, p. 3):



Figure 1: Existing House at 7117 Garland Avenue



Figure 2: Area of on-street parking along Garland Avenue

Exhibit 24, p. 3

Technical Staff provided a detailed description of the available on-street parking for the properties located within 300 feet of the proposed use (Exhibit 24, p. 9):

There are 14 one-family residential properties within 300 feet of the subject site. Two of these residential properties have driveways. The remaining twelve residential properties do not have driveways or garages. However, six of the 12 residential properties are corner lots that have street frontages that range from 63 feet to 143 feet which can sufficiently accommodate more than one vehicle. The remaining six residential properties have street frontages that vary from 50 feet

to 60 feet. The subject property has approximately 55 feet of frontage on Garland Avenue. Based on the property's frontage, two averaged [sized] cars could be parked directly in front of the property. Thus, parking directly in front of the property is sufficient to ensure that this accessory apartment will not prevent a resident within 300 feet of the subject property from parking on-street near their residence.

Technical Staff further found that “[t]he addition of one car associated with the proposed accessory apartment is unlikely to reduce the availability of on-street parking within 300 feet of the proposed use.” *Id.*

D. Community Response

There was no community response, written or by testimony, received in this case by the Hearing Examiner or Technical Staff. Exhibit 24, p. 6. Applicant testified that the only verbal comments she has received from her neighbors have been supportive of the application. T. 31.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for all conditional uses. Zoning Ordinance § 59.7.3.1.⁹ Specific standards are those which apply to the particular use requested; in this case, an attached accessory apartment use. Zoning Ordinance § 59.3.3.3.A & B.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard specified in Zoning Ordinance § 59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application satisfies all of the specific and general requirements for this use, as discussed below, and with the conditions of approval set forth in

⁹ As provided in Section 3.3.3.2.c of the Zoning Ordinance, “the Hearing Examiner may approve a conditional use for the Accessory Apartment under Section 7.3.1, except that the findings under Section 7.3.1.E are not applicable to this type of conditional use.”

Part IV, below.

A. Application Requirements Regarding Ownership of the Subject Property

The Zoning Ordinance addresses ownership requirements in Section 59.7.3.1.B.1:

1. Ownership:

- a. An applicant must own the subject property or be authorized by the owner to file the application.*
- b. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, written authorization from that entity or agency must be submitted with the application.*

Conclusion: The Applicant submitted a deed showing transfer of the property to her name as sole owner which is also reflected in the SDAT records for the property. Exhibits 4 and 11. The Hearing Examiner finds and concludes that this standard has been met.

B. Accessory Apartment Use Standards (Article 59.3)

The specific standards for approval of an attached accessory apartment use are set out in Section 59.3.3.3.A. & B of the Zoning Ordinance. In general, accessory apartments are permitted as limited uses, requiring only a license from DHCA. Zoning Ordinance, § 59.3.1.6. Property owners must obtain a conditional use approval for an accessory apartment if they do not have the amount of off-street parking required for the limited use or if there is another accessory apartment within 300 feet of the dwelling in which the accessory apartment is to be located. *Zoning Ordinance*, § 59.3.3.2.A.2.b. Thus, conditional use applications for attached accessory apartments must meet all standards required for a limited use accessory apartment (except for the required number of on-site parking spaces or the distance between accessory uses) and standards specific to attached accessory apartments. In addition, an Applicant must demonstrate that on-street parking is sufficient to serve the use or, if the deviation is from the minimum distance between apartments, that the use “does not result in an excessive concentration of similar uses, including other

conditional uses, in the general neighborhood of the proposed use.” *Id.*, §59.3.3.3.A.2.c. Standards pertinent to this approval, and the Hearing Examiner’s finding for each standard, are set forth below

C. Limited Use Standards for All Accessory Apartments, (Section 59.3.3.3.A)

Section 59.3.3.3.A – Accessory Apartment

1. Defined, In General

Accessory Apartment means a second dwelling unit that is subordinate to the principal dwelling. An Accessory Apartment includes an Attached Accessory Apartment and a Detached Accessory Apartment.

2. Use Standards for all Accessory Apartments

a. Where an Accessory Apartment is allowed as a limited use, it must satisfy the following standards:

- i. Only one Accessory Apartment is permitted for each lot.*
- ii. The Accessory Apartment was approved as a conditional use before May 20, 2013 and satisfies the conditions of the conditional use approval; or*
- iii. The Accessory Apartment is licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and*

(a) The apartment has the same street address as the principal dwelling;

Conclusion: Applicant is requesting approval for one accessory apartment in the basement of an existing detached dwelling located at 7117 Garland Avenue, Takoma Park. The apartment will have the same address as the principal dwelling. The property does not have a driveway and installation of a driveway is not proposed because of the lots size, topography, and location of the dwelling, utilities and trees. As a result, the property does not meet the minimum on-site parking requirements necessary for a Class III Accessory Apartment license. Based on a Referral Notice from DHCA, Applicant filed an application for an attached accessory apartment conditional use on November 18, 2015, seeking approval to deviate from the on-site parking requirements.

Exhibits 1-3. Following approval of this conditional use, the Applicant must file for a modified license for an accessory apartment as required by DHCA.

(b) One on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Apartment, then 2 on-site parking spaces must be provided;

Conclusion: In addition to the one on-site parking space for the accessory apartment use required under this section, Section 59.6.2.4.B of the Zoning Ordinance requires the provision of two on-site parking spaces for the main dwelling. As discussed in the previous section, the property does not have a driveway and installation of a driveway is not proposed or feasible. Thus, the property does not meet the on-site parking requirements for the conditional use. However, as provided in Section 59.A3.3.3.A.2.b, Applicant filed an application for a conditional use seeking approval to deviate from the on-site parking requirements on the grounds that there is adequate on-street parking to accommodate both uses. Exhibit 3. The adequacy of available on-street parking is discussed below in Section 59.3.3.3.A.2.c.i.

(c) The maximum gross floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, must be less than 50% of the total floor area in the principal dwelling, including any floor area used for an Accessory Apartment in the cellar of the principal dwelling, or 1,200 square feet, whichever is less;

Conclusion: According to the SDAT records for the property, the “above-grade enclosed area” for the two-story detached dwelling is 1,176 square feet. Exhibit 11. The proposed accessory apartment will be located in the basement of the main dwelling and will be approximately 574 square feet in size. Thus, the total floor area for the principal dwelling, including the basement, is 1,722 square feet. Therefore, the accessory apartment at 574 square feet is less than 50% of the

total floor area in the principal dwelling and the statutory maximum of 1,200 square feet. Based on this evidence, the Hearing Examiner finds and concludes that the standard will be satisfied.

(d) The maximum floor area used for an Accessory Apartment in a proposed addition to the principal dwelling must not be more than 800 square feet if the proposed addition increases the footprint of the principal dwelling; and

Conclusion: The proposed accessory apartment will be located in the basement of the principal dwelling. No addition or increase in the footprint of the principal dwelling is proposed. Therefore, the Hearing Examiner finds that this standard is not applicable to this application.

(e) The maximum number of occupants is limited by Chapter 26 (Section 26-5); however, the total number of occupants residing in the Accessory Apartment who are 18 years or older is limited to 2.

Conclusion: As a condition of approval, the total number of occupants residing in the accessory apartment who are 18 years or older is limited to two and the Applicant must comply with the determination of the Housing Code Inspector as to the limits of occupancy in the accessory apartment. Applicant testified that she will comply with the limits of occupancy set herein. T. 7, 14-15. This condition of approval is set forth in Part IV of this Decision. Having no evidence to the contrary, the Hearing Examiner finds that the use as proposed with this condition of approval, this standard has been met.

iv. An Accessory Apartment must not be located on a lot where any other allowed rental Residential use exists; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm Tenant Dwelling or a Guest House.

Conclusion: Staff advises there are currently no other rental residential uses on the property and included this prohibition as a condition of approval. Exhibit 24, p. 2. Applicant testified that

she will comply with all conditions of approval. T. 6-7. This condition of approval is set forth in Part IV of this Report and Decision. Having no evidence to the contrary, the Hearing Examiner finds that the use as proposed with this condition of approval, this standard has been met.

- v. In the Agricultural and Rural Residential zones, an Accessory Apartment is excluded from any density calculations. If the property associated with an Accessory Apartment is subsequently subdivided, the Accessory Apartment is included in the density calculations.*

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, the Hearing Examiner finds and concludes that this standard is not applicable to this application.

- vi. Screening under Division 6.5 is not required.*

Conclusion: This section exempts accessory apartments from the Division 6.5 screening requirements for conditional uses and this standard is not applicable.

- vii. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, the Hearing Examiner finds that this standard is not applicable to this application.

- b. An Accessory Apartment conditional use application may be filed with the Hearing Examiner to deviate from the following limited use standards;*

- i. The number of on-site parking spaces; or*

Conclusion: The property does not have a driveway and therefore does not meet the minimum on-site parking requirements for a Class III Accessory Apartment license. Exhibit 31. Based on a Referral Notice from DHCA, Applicant filed this conditional use application on November 18, 2015, seeking approval to deviate from the on-site parking requirements. Exhibits 1-3.

- ii. The minimum distance from any other Attached or Detached Accessory Apartment.*

Conclusion: The minimum distance from other accessory apartments in the R-60 Zone is 300 feet. Section 3.3.3.B.2.d of the Zoning Ordinance. Technical Staff reports that there are no approved accessory apartments located within 300 feet of the proposed. Exhibit 24, p. 4. Having no evidence to the contrary, the Hearing Examiner finds that this standard is not applicable to the application.

c. Where an Accessory Apartment conditional use application is filed under Section 3.3.3.A.2.b, the Hearing Examiner may approve a conditional use for the Accessory Apartment under section 7.3.1, except that the findings under Section 7.3.1.E are not applicable to this type of conditional use. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply to all accessory apartment conditional use applications. In addition, the limited use standards of Section 3.3.3.B.2 apply to Attached Accessory Apartment applications, and the limited use standards of Section 3.3.3.C.2.a apply to Detached Accessory Apartment applications.

i. Fewer off-street spaces are allowed if there is adequate on-street parking. On-street parking is inadequate if:

(a) The available on-street parking for residents within 300 feet of the proposed Accessory Apartment would not permit a resident to park on-street near his or her residence on a regular basis; and

(b) The proposed Accessory Apartment is likely to reduce the available on-street parking within 300 feet of the proposed Accessory Apartment.

Conclusion: The property is located in an area of Takoma Park that does not require parking permits and parking along both sides of Garland Avenue is unrestricted. Exhibit 5, p. 3. There are 14 properties located within a 300 foot radius of the subject property. The demand for on-street parking is slightly reduced because two properties have on-site parking. There is available on-street parking for the 12 remaining properties without on-site parking. Six of these properties, including the subject property, have street frontages ranging from 50 feet to 60 feet. The subject

property has 55 feet of street frontage along Garland Avenue which Staff reports provides adequate on-street parking for two averaged size vehicles. Exhibit 24, p. 9. Applicant testified having no problem parking in front of her property which she reports can accommodate parking for at least 3 vehicles. T. 14. Based on her inspection of the property, the Housing Code Inspector reported “curbside parking is available for at least 4 vehicles.” Exhibit 25; T. 26. The remaining six of the 12 properties without on-site parking are corner lots with street frontages ranging from 63 feet to 143 feet which Staff reports “can sufficiently accommodate more than one vehicle.” Exhibit 24, p. 9. Based on these facts, Technical Staff found there is adequate on-street parking to accommodate the proposed use, and the addition of one vehicle to the neighborhood will not reduce the available on-street parking or “prevent a resident within 300 feet of the subject property from parking on-street near their residence on a regular basis.” *Id.* For these reasons and as previously discussed in Part II.C of this Report and Decision, the Hearing Examiner agrees with Staff and finds that there is adequate on-street parking in front of the property to accommodate the proposed accessory apartment use without adversely affecting or reducing the available on-street parking for residents located within 300 feet of the subject property. Therefore, the Hearing Examiner finds and concludes that this standard has been met.

ii. When considered in combination with other existing or approved Accessory Apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed use.

Conclusion: As previously discussed, the conditional use application was filed to deviate from the on-site parking requirements under Section 3.3.3.A.2.b.i. Staff reported there are no approved accessory apartments located within 300 feet of the proposed use. Therefore, the Hearing Examiner finds that this standard is not applicable to this application.

D. Limited Use Standards for Attached Accessory Apartments (Section 59.3.3.3.B)**Section 59.3.3.3.B - Attached Accessory Apartment****1. Defined**

Attached Accessory Apartment means a second dwelling unit that is part of a detached housing building type and includes facilities for cooking, eating, sanitation, and sleeping. An Attached Accessory Apartment is subordinate to the principal dwelling.

2. Use Standards

Where an Attached Accessory Apartment is allowed as a limited use, it must satisfy the use standards for all Accessory Apartments under Section 3.3.3.A.2 and the following standards:

a. A separate entrance is located:

- i. On the side or rear of the dwelling;*
- ii. At the front of the principal dwelling, if the entrance existed before May 20, 2013; or*
- iii. At the front of the principal dwelling, if it is a single entrance door for the use of the principal dwelling and the Attached Accessory Apartment.*

Conclusion: A separate entrance to the accessory apartment is located on the rear of the existing dwelling. Exhibit 24, p. 9. Therefore, the Hearing Examiner finds and concludes this standard has been met.

b. The detached house in which the Accessory Apartment is to be created or to which it is to be added must be at least 5 years old on the date of the application for a license or a conditional use.

Conclusion: According to the SDAT records for the property, the detached dwelling was built in 1948. Exhibit 11. Therefore, the Hearing Examiner finds that the existing dwelling is more than 5 years old and concludes this standard has been met.

c. In the RE-2C, RE-1, and R-200 zones the Attached Accessory Apartment is located at least 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, the

Hearing Examiner finds that this standard is not applicable to this application.

d. In the RNC, R-90, and R-60 zones the Attached Accessory Apartment is located at least 300 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.

Conclusion: For the reasons discussed in Section 59.3.3.3.A.2.b above, the Hearing Examiner finds that there are no existing accessory apartments located within 300 feet of the subject property. Therefore, the Hearing Examiner concludes this standard has been met.

IV. DECISION

Based on the foregoing findings and conclusions, and a thorough review of the entire record, the application of Vicki L. Ferguson, CU 16-08, for a conditional use to allow an attached accessory apartment to be located in the basement of an existing detached dwelling located at 7117 Garland Avenue, Takoma Park, under Sections 59.7.3.1 and 59.3.3.3.A & B of the Zoning Ordinance, is hereby **GRANTED**, subject to the following conditions:

1. The Applicant shall be bound by all of her testimony and exhibits of record.
2. The total number of occupants residing in the accessory apartment who are 18 years or older is limited to two (2).
3. No other rental Residential uses are permitted to be located on the subject property where the accessory apartment is located.
4. The Applicant must comply with the determination of the Housing Code Inspector as to the limits on occupancy in the accessory apartment and make all repairs necessary to correct those deficiencies noted in the Housing Inspector's report (Exhibit 25).
5. The Applicant must comply with any directions of the Housing Code Inspector to ensure safe and code-compliant occupancy.
6. The Applicant must obtain all required building permits necessary to renovate the basement as proposed. If modifications to the site and other related plans filed in this case are required by the Department of Permitting Services, the Applicants must file a copy of the revised site or other related plans with the Office of Zoning and Administrative Hearings.

7. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the conditional use attached accessory apartment as granted herein. Applicant shall at all times ensure that the conditional use premises comply with all applicable codes (including but not limited to building, life, safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Respectfully submitted,



Tammy J. CitaraManis
Hearing Examiner

Issued this 18th day of April, 2016.

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record or aggrieved party may file a written request to present oral argument before the Board of Appeals, in writing, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

COPIES TO:

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Barbara Jay, Executive Director
Montgomery County Board of Appeals
Kathleen A. Reilly, Planning Department
Cece Kinna, Housing Code Inspector

